



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/157667

PRELIMINARY RECITALS

Pursuant to a petition filed May 13, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 14, 2014, the agency sent the Petitioner two notifications of Foodshare Overissuance:
Claim Number [REDACTED], indicating that the Petitioner was overissued benefits in the amount of \$2,188.00 for the period of January 1, 2013 to December 31, 2013.

Claim Number [REDACTED], indicating that the Petitioner was over-issued benefits in the amount of \$174.00 for the period of January 1, 2014 to January 31, 2014.

(Exhibit 2, pgs. 21-29)

3. The overpayment was caused because the Petitioner did not report his VA benefits as income. (Testimony of Petitioner; Testimony of Ms. Johnson)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 13, 2014.

DISCUSSION

In the case at hand, the Petitioner does not dispute the fact that he was over-issued FoodShare benefits during the times in question because he did not report his VA benefits as income. Petitioner filed an appeal, because he would like the agency to take into account the child support payments he has made when calculating the FoodShare overissuance.

Court ordered child support obligations, including court ordered payments on arrearages, are allowed as a deduction from income. *FoodShare Wisconsin Handbook (FSH) §4.6.5.1*. Under the FoodShare guidelines in existence prior to October 29, 2013, a child support deduction could still be claimed by FoodShare applicants/members who made regular child support payments, but did not have a court order in place. *FSH §4.6.5.1 Releases 12-02 and 13-02*. However, the applicant/member needed to provide verification of the child support obligation, such as cancelled checks, written documentation between the parties, bank statements or check stubs. *Id.*

The Petitioner and his ex-wife testified credibly that since 2012, the Petitioner has been paying \$550 per month in child support. Both testified that there was no court order for the payment and that they had informally agreed upon the \$550 dollar amount. Petitioner provided Exhibit 2, which is a signed statement from the Petitioner and his ex-wife indicating that he has been paying \$550 per month in child support since October 31, 2012.

When asked why he didn't previously report the child support payments, the Petitioner indicated that he just didn't think about it, because he was not specifically court ordered to make the payments and because he felt he owed it to his ex-wife, since he had put her through some very difficult times.

Because the Petitioner has been paying \$550 per month in child support since October 31, 2012 and provided verification of that at the hearing, the agency should take the child support into account when calculating the overpayment for January 1, 2013 through October 31, 2013. However, because policy changed effective October 29, 2013, the informal child support payments made November 2013 forward may not be allowed as a deduction.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overissued FoodShare benefits, but did not correctly determine the overpayment amount for the months of January 1, 2013 through October 31, 2013.

THEREFORE, it is

ORDERED

- 1) That the agency re-calculate the amount of the overpayment between January 1, 2013 and October 31, 2013, allowing for a child support deduction of \$550 per month. The agency shall then amend Claim Number [REDACTED] to reflect the corrected overpayment amount. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

2) With regard to Claim Number [REDACTED], the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of July, 2014.

\s\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on July 3, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability



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